



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

JACK CONWAY
ATTORNEY GENERAL

March 30, 2010

CAPITOL BUILDING, SUITE 118
700 CAPITAL AVENUE
FRANKFORT, KENTUCKY 40601
(502) 696-5300
FAX: (502) 564-2894

Senator David Williams, President
State Senate
Commonwealth of Kentucky
Room 236, Capitol Annex
Frankfort, KY 40601

Representative Jeff Hoover, Minority Floor Leader
House of Representatives
Commonwealth of Kentucky
Room 418, Capitol Annex
Frankfort, KY 40601

RE: Requested Litigation against various agencies of the United States

Gentlemen:

I am in receipt of your respective requests from Kentucky House and Senate Republicans that the Office of the Attorney General join a legal constitutional challenge of the recently passed federal healthcare reform law that will provide access to affordable health care for more than 650,000 Kentuckians currently without health insurance. Unfortunately, this rush to the courthouse is nothing new. Historically, opponents of reform have turned to the courts when major legislation that they disagree with is enacted by the Congress. Challenges were brought to the Social Security Act, the Civil Rights Act, and the Voting Rights Act, and all of those acts were upheld. Like those challenges, the lawsuits that have been filed this week in an attempt to block health care reform are without merit. Therefore, I do not intend to use Kentucky taxpayer resources to join in the legal challenge at a time when your chambers are considering painful cuts to social services and education.

Decades of constitutional jurisprudence regarding the Commerce Clause upholds the Congress's authority to effectively regulate health care and the health insurance systems in this country. That authority was upheld by the U.S. Supreme Court in 2005. In fact, the arguments you espouse against the health care reform bill could jeopardize the entire social security system, including the monthly benefit checks that nearly 845,000 of your constituent senior citizens and disabled Kentuckians depend upon for their basic needs.

With regard to your \$300 million "estimate" of cost to the Commonwealth -- this appears to be rhetoric based upon fear, not reality. Under the federal bill, Medicaid continues to be a voluntary, not mandatory, program. To the degree that the federal matching terms are more generous, the bill will benefit the Commonwealth when the law is phased in after 2014.

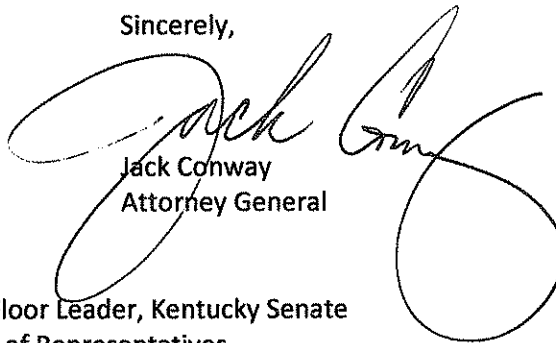


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Rep. Jeff Hoover
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As for the mandate that states must create health insurance exchanges, a close inspection of the law reveals this is not the case. States may choose whether or not to set up these exchanges. If states decide not to form exchanges, the U.S. Cabinet for Health and Human Services will set up exchanges for the states.

Based on the foregoing, during the worst economic crisis in a generation, I will not misuse the resources or power of this office to pursue litigation that is without merit. Further, I would reiterate the invitation I extended in January to Representative Hoover that my door is always open, especially when the legislature is in session just two floors up from my office. Although I am making this response available to the media as a public response to your public request, I would reiterate that there is no need to communicate through the media. Indeed, I learned of both of your letters from news accounts prior to their hand delivery to my office.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read "Jack Conway".

Jack Conway
Attorney General

c: Senator Ed Worley, Minority Floor Leader, Kentucky Senate
Greg Stumbo, Speaker, House of Representatives